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January 27, 2011

Hon. Alvin K. Hellerstein
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

In re: World Trade Center Disaster Site Litigation
Docket Nos. 21 MC 100 [AKH]
21 MC 103 [AKH]

Honorable Sir:

We are in receipt of an application by Worby Groner Edelman & Napoli Bern, LLP [*"WGE&NB"*] for a five (5%) override on each individual plaintiff's net settlement amount, to be taken from that plaintiff's attorneys' fee portion of the settlement, as and for what has been styled by WGE&NB a "Common Benefit Fee."

While this firm only has two clients who have managed to fit within the boundaries of the settlement negotiated by WGE&NB, that firm has nearly 10,000. Consequently, while the dollar effect on Parker Waichman Alonso LLP is *de minimus*, we feel an obligation to respond.

There is no doubt in anyone's mind that WGE&NB did an extraordinary amount of work, However, to suggest that this was done primarily for the "common benefit" is less than accurate. Their overwhelming financial exposure, both as a partnership and as individuals (partners have admitted in open court their personal guarantees of loans in the millions of dollars to finance the litigation) dictate that with nearly all the cases, there was little "common" about the "benefit." Moreover, unlike normal "common benefit" congregations of attorneys in mass tort litigation, WGE&NB did not really invite or entertain the participation of other attorneys in "common benefit" activities that would eventually garner the sharing of any "common benefit" fees.

Because of the nature of the effort of WGE&NB for its own good and the good of its own clients, which made up nearly all the WTC plaintiffs, these actions cannot be viewed as venal. However, the within application for a five (5%) override on the attorneys' fees of the little fish who were by their side is an unfortunate coda to that effort.

The history of this litigation does not support WGE&NB's designation as "Plaintiffs' Co-Liaison Counsel," nor should it. WGE&NB has always operated in the interests of its own clients who, indeed, were the most numerous of the plaintiffs. Without doubt, in most cases what was good for WGE&NB's clients was good for all plaintiffs. But in all honesty, that was less by design than by default. In fact, in one particularly disturbing instance of which this Court is well-aware, WGE&NB negotiated a cut-off date for participation in the SPA that was not revealed to the public and potential claimants until after it had passed. This was done by WGE&NB for the express purpose of maximizing recovery to its own clients and, per force, its own fees. This effort was understandable, but is scarcely one that bespeaks "common benefit."

Based on fees to be received by WGE&NB, this application is a bit strange. After all, WGE&NB had waived a portion of their fees and expenses in front of the Court and the public, receiving the plaudits of both, though its actions were plainly to ensure the Court's acceptance of the settlement it had negotiated. This application seems to negate and trivialize the work and time expended by other attorneys who serviced their clients; attorneys who didn't have the huge financial interest that WGE&NB had voluntarily undertaken when it determined that it would be not only the "lead" firm in the litigation, but quite nearly, the "only" firm in the litigation. That decision was made by WGE&NB for business reasons and it seems to have been a good one. However, that decision had nothing to do with, and should not be underwritten by, the small number of individual plaintiffs who did not sign on with WGE&NB. In the final analysis, there is not one thing that WGE&NB did for any of these plaintiffs that it would not done for itself and its own interests.

Respectfully submitted,

Jay L. T. Breakstone.

JLTB:ajl

cc.: All interested parties (via ECF)